

Message Text

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PAGE 01 BRUSSE 14547 261730Z
ACTION EUR-12

INFO OCT-01 ISO-00 ACDA-12 CIAE-00 INR-10 IO-13 L-03
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FM AMEMBASSY BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 8074

INFO DOE WASHDC IMMEDIATE

DOE GERMANTOWN IMMEDIATE

AMEMBASSY VIENNA PRIORITY

ALL EC CAPITALS PRIORITY

C O N F I D E N T I A L BRUSSELS 14547

USEEC

VIENNA FOR USIAEA, ACDA FOR HOUCK, DEPT PASS IO/SCT,
OES/NET, S/AS

E.O. 11652: GDS

TAGS: PARM, IAEA, TECH, EEC

SUBJECT: PARTICIPATION OF EURATOM IN THE INTERNATIONAL
- CONVENTION ON PHYSICAL PROTECTION - VIENNA

1. ARMANDO BARUFFA, CHIEF ADVISER TO LEONARD WILLIAMS,
DIRECTOR GENERAL, DG XVII, PROVIDED MISSION WITH CURRENT
EC VIEW OF THE PHYSICAL PROTECTION CONVENTION AND RELATED
CASE BROUGHT BEFORE THE COURT OF JUSTICE BY BELGIUM.

2. BARUFFA STATED THAT ARTICLE 4 OF THE CONVENTION DRAFT
COULD INTERFERE WITH EURATOM'S ABILITY TO IMPLEMENT
ARTICLE 52 OF THE EURATOM TREATY WHICH REQUIRES THE FREE
FLOW OF NUCLEAR MATERIAL AMONG MEMBER STATES.

3. SINCE ARTICLE 4 WOULD RESTRICT THE FLOW OF NUCLEAR
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MATERIAL TO COUNTRIES WHICH FAIL TO PROVIDE CERTAIN PHYSI-
CAL PROTECTION AND RECOVERY ASSURANCES, EURATOM FEELS THAT
A SITUATION COULD RESULT WHEREBY COMPLYING MEMBER STATES
WOULD HAVE ACCESS TO MATERIALS WHILE MEMBER STATES NOT IN
COMPLIANCE WOULD NOT HAVE ACCESS.

4. SUMMING UP, BARUFFA FEELS THIS IS REALLY A LEGAL QUES-

TION CALLING FOR EURATOM PARTICIPATION AS REQUIRED IN ARTICLE 103 OF THE EURATOM TREATY. BARUFFA STATED THAT EURATOM IS SEEKING PARTICIPATION IN THE CONVENTION TO AVOID ULTIMATE CONFLICT WITH THE EURATOM TREATY REGARDING FREE FLOW OF MATERIAL. BARUFFA ADDED THAT THE COMMUNITY HAS NO DESIRE TO BECOME INVOLVED WITH ACTUAL PHYSICAL PROTECTION OF NUCLEAR MATERIAL. HE STATED THAT PHYSICAL SECURITY (E.G., POLICE FORCES AND OPERATIONAL-TYPE MATTERS) IS CLEARLY A NATION-STATE CONCERN, BUT SINCE THE PARTICULAR ARTICLE 4 LINKS PHYSICAL SECURITY WITH MATTERS THAT FALL UNDER EURATOM AUSPICES (SUCH AS ENSURING FREE NUCLEAR FLOW OF MATERIAL AMONG ALL EURATOM MEMBERS), EURATOM MUST ALSO PARTICIPATE IN THE CONVENTION, AT LEAST WITH RESPECT TO ARTICLE 4. HE SEES THE MATTER BEING HANDLED SIMILAR TO THE IAEA/EURATOM SAFEGUARDS AGREEMENT WHEREIN BOTH EURATOM AND THE MEMBER STATES SIGNED THE AGREEMENT.

5. BARUFFA ADDED THAT THE ISSUE IS NOW BEFORE THE COURT AND SINCE THE CASE IS CONSIDERED TO BE PRIORITY, HE ANTICIPATES THAT A DECISION WILL BE RENDERED IN ONE OR TWO MONTHS.

6. COMMENT: OUTCOME OF COURT CASE, BECAUSE IT FOCUSES ON FREE MOVEMENT OF NUCLEAR MATERIAL WITHIN EC, HAS IMPORTANCE BEYOND QUESTION OF WHETHER EURATOM AS SEPARATE ENTITY ADHERES TO VIENNA CONVENTION, AND THUS WHETHER FRANCE DECIDES TO PARTICIPATE OR NOT IN THAT CONVENTION. AS WE CONFIDENTIAL

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SEE IT, IF FRANCE REFUSES TO GIVE US WRITTEN ASSURANCE ON PHYSICAL PROTECTION, A COURT DECISION IN FAVOR OF EURATOM COULD CREATE SITUATION IN WHICH EURATOM COULD BE PRECLUDED FROM ENDORSING NEW CONTRACTS SINCE U.S. WOULD NOT HAVE ASSURANCES NECESSARY FROM ALL MEMBER STATES. WE BELIEVE UNCERTAINTIES HERE ARGUE IN FAVOR OF TEMPORIZING OPTION, (IF THERE IS RISK THAT FRANCE MAY REFUSE TO GIVE WRITTEN ASSURANCE, AS EMBASSY PARIS PREDICTS) AS RECOMMENDED BRUSSELS 14410, UNDER WHICH WE NEED NOT PREJUDGE CASE NOW, AT LEAST UNTIL AFTER COURT HAS RULED (PROBABLY IN SEPTEMBER). HINTON

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